



**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1935

No. 236

**INTERNATIONAL STEVEDORING COMPANY,**  
a Corporation, Petitioner,

against

**B. HAVERTY, Respondent**

**BRIEF OF RESPONDENT**

**JOHN F. DORE**

**MARK W. LINDHMAN**

*Attorneys and Counsel for Respondent*  
305 American Bank Building  
Seattle, Washington

# INDEX CONTENTS

Page

Statement of the case, facts and law briefly stated.....	1
Statement concerning the injury.....	10
Outline of legal propositions "A", "B" 1-6, "C" 1-8.....	3
Outline of argument, fellow servant doctrine on land and water.....	14
Legal Propositions	
"A." A state decision will be upheld if it works no material prejudice to the uniformity of the maritime law.....	3, 12
"B". Evolution of the fellow servant doctrine on land.....	3, 14
"B" 1. The fellow servant doctrine is a common law principle..	3, 16
"B" 2. The common law courts modified the doctrine of fellow service, by announcing the non-delegable duty doc- trine .....	4, 18
"B" 3. The duty of warning and signaling is non delegable under the common law.....	4, 24
The Supreme Court of the United States held that the duty of warning and signaling is non-delegable.....	27
"B" 4. The State legislatures abrogated the fellow servant doctrine .....	6, 29
"B" 5. Congress abrogated the fellow servant doctrine, passing the Federal Employers Liability Act.....	6, 30
"B" 6. Under both common law (see "B" 3) and Federal Em- ployers Liability Act, the duty of warning and signal- ing is non-delegable—a uniform principle.....	6, 31
"C". Master and Servant relations on water—doctrine of fellow service in Admiralty.....	7, 32
"C" 1. Admiralty adopted from the medieval age the mainten- ance, wage and cure doctrine.....	7, 35
"C" 2. Admiralty adopted from England the full indemnity or "seaworthy" doctrine .....	7, 35
"C" 3. Admiralty adopted the fellow servant doctrine together with its modifications from the common law in long shoremen cases .....	7, 36
"C" 4. Admiralty adopted State Statutes not prejudicial to the uniformity of the maritime law.....	8, 41
"C" 5. Congress established the vice principle or non-delegable duty doctrine in admiralty in 1915.....	9, 42
"C" 6. Congress abrogated the fellow servant doctrine, passing the Jones Act (Federal Employers Liability Act) in 1920 .....	9, 42
"C" 7. Under both common law and Jones Act (Federal Em- ployers Liability Act) the duty of warning and signal- ing is non-delegable. (See "B" 3 and "B" 6).....	9, 43

# INDEX CONTENTS

Page

"C" 8. The application of the monitory signal doctrine is not prejudicial to the uniformity of the maritime law.....	9, 44
---	-------

## TABLE OF CASES

Alaska Pacific vs. Egan, 202 Fed. 867.....	8, 39
Allard vs. Contract Co., 64 Wash. 14.....	5, 26
Anderson vs. Globe, 57 Wash. 502.....	8, 38
Anderson vs. Mill Co., 42 Minn. 424.....	4, 25
Anderson vs. Pittsburgh Coal, 108 Minn. 455.....	8, 10, 39, 44
Arveson vs. Boston, etc., Wharf, 128. Minn. 178.....	5, 26
Atlantic Transport vs. Imbrovek, 234 U. S. 52.....	8, 9, 10, 14, 34, 36, 40
B. & O. vs. Robertson, 300 Fed. 314.....	7, 31
Baccelli vs. Delaware, 122 N. Y. S. 849.....	5, 25
Benedict on Admiralty, 4 Ed. p. 4.....	33
Benedict on Admiralty, 5th Ed., p. 724 et seq.....	32
Benedict on Admiralty, 5th Ed., p. 33.....	8, 39
Benedict on Admiralty, 5th Ed., p. 95.....	41
Berolzheimer, World's Legal Philosophies, p. 22.....	34
Bogart, Economic History of U. S., pp. 408, 425, 423.....	22
Boveric, 167 Fed. 520.....	8, 40
Bowman vs. Coal Co., 168 Mo. App. 703.....	4, 25
Brown vs. Pacific Coal, 241 U. S. 571.....	7, 31
Brown vs. Sessler, 128 Tenn. 665.....	5, 26
Buffalo, 147, Fed. 304.....	8, 39
Buffalo 154, Fed. 815.....	8, 39
Burgin vs. M. K. & T., 90 Kan. 194.....	30
Burlington vs. Crocket, 19 Neb. 138.....	4, 25
Carlisle vs. Sandanger, 259 U. S. 255.....	43
Carlson vs. White Star, 39 Wash. 394.....	39
Chicago vs. Dutcher, 182 Fed. 494.....	5, 25
Chicago vs. Gross, 35 Ill., App. 178, 178.....	4, 25
City of Antonio, 143 Fed. 955.....	8, 39
Cole vs. Gerrick, 62 Wash. 226.....	6, 26
Collins vs. Barner, 268 Fed. 699.....	6, 31
Comrade vs. Atlas, 44 Wash. 470.....	6, 26
Coast Ship Co. vs. Yeager, 120 Miss. 152.....	5, 26
Cook vs. Camp, 183 N. C. 48.....	4, 10, 25, 27, 39, 44
Cunningham vs. Adna, 71 Wash. 111.....	6, 26
Cunningham, "The Extension to the admiralty of the fellow servant doctrine" 18 Har. L. R. p. 295.....	16
Curran vs. R. Co., 211 N. Y. 60.....	5, 26

# INDEX CONTENTS

	Page
Cyc 26, p. 1168.....	4, 24
Director General of R. vs. Templin, 268 Fed. 483.....	7, 32
Erickson vs. St. Paul, 41 Minn. 500.....	4, 25
Farwell vs. Boston, 4 Metcalf 49, 38 Am. Dec. 339.....	3, 17, 18, 22
Federal Mining Co. vs. Anderson 247 Fed. 472.....	7, 31
Fitzgerald vs. Twine Co., 104 Minn. 138.....	5, 25
Flynn vs. Christensen, 273 Fed. 385.....	8, 39
Galley vs. Smith, 272 Fed. 999.....	8, 39
Germanus vs. R. Co., 74 N. J. L. 662.....	5, 25
Glacken vs. Cincinnati, 209 Ky. 28.....	7, 32, 39
Gladestry, 128 Fed. 591.....	8, 40
Great Lakes vs. Kierejewski, 261 U. S. 479.....	9, 41
Green Star vs. Nanyang, 3 Fed. (N. S.) 369.....	43
Hamilton, 207 U. S. 398.....	9, 41
Harden vs. Gordon, 2 Mason 541, 11 Fed. Case, p. 480.....	7, 35
Harold 21, Fed. 428.....	37
Haverty vs. International Stevedoring Co., 134 Wash. 235.....	10
Herman vs. Port Blakeley Mill, 71 Fed. 853.....	39
Hines vs. Mfg. Co., 199 Mass. 522.....	5, 25
Hobson, Evolution of Modern Capitalism, p. 88.....	20
Hogan vs. Killeen, 265 Fed. 614.....	7, 31
Hoquiam, 253 Fed. 627.....	38
Hough vs. Grants Pass, 41 Ore. 531.....	4, 25
Hough vs. Texas, 100, U. S. 213.....	4, 27, 45
Howell, 273 Fed. 513.....	8, 16, 39
Hughes on Admiralty, 2nd Ed., pp. 4, 5.....	32
Huxoll vs. R. Co., 99 Neb. 170.....	5, 26
Illinois vs. Ziemkowski, 220 Ill. 324.....	5, 26
Imbrovek Case—See Atlantic vs. Imbrovek	
Jacobsen vs. Rothchild, 62 Wash. 127.....	8, 38
Jones vs. R. R. Co., 149 Ky. 566.....	5, 25
Kalfarli, 277 Fed. 391.....	41
Keating vs. Pacific, 21 Wash. 415.....	38
Kinghorn, 297 Fed. 621.....	8, 16, 39
Knickerbocker Ice Co. vs. Stewart, 253 U. S. 149.....	3, 12
Kreigh vs. Westinghouse, 214 U. S. 255.....	4, 25, 28
Labatt, Master & Servant, 2nd Ed., p. 2936.....	4, 24
Labatt, Master & Servant, 2nd Ed., p. 8864.....	6, 29
Labatt, Master & Servant, 2nd Ed., pp. 4554, 4555.....	24
Labatt, Master & Servant, 2nd Ed., p. 4308.....	4, 7, 24, 31
Lancaster vs. R. Co., 143 Mo., App. 163.....	5, 25
Lee, Historical Jurisprudence, p. 1.....	34

# INDEX CONTENTS

	Page
Lehigh Valley vs. Doktor, 290 Fed. 760.....	7, 31
Lisnacrieve, 87 Fed. 570.....	8, 40
Loria, Economic Foundations of the Law, p. 240 (Evolution of Law Series, Vol. 3).....	34
Lyons vs. Ryerson, 148 Ill., App. 284.....	5, 25
McCalley's vs. R. Co., 169 Ky. 47.....	5, 26
McGovern vs. Philadelphia, 235, U. S. 389.....	7, 31
McKee vs. R. Co., 151 Ky. 698.....	5, 26
McLellan vs. Fuller, 226 Mass. 374.....	5, 26
Magdaline, 91 Fed. 798.....	8, 39
Maloney vs. Stetson, 46 Wash. 645.....	6, 26
Maness vs. Coal Corp., 128 Tenn. 143.....	4, 25
Maple Floor Manufacturers Assn. vs. U. S. 268 U. S. 563.....	19
Marshall, "Reading in Industrial Society" 655.....	22
Martin vs. Atchinson, 166 U. S. 399.....	31
Mather vs. Rillston, 156 U. S. 391.....	4, 25, 27
Millers etc., vs. Brand, Adv. Op. Dec., Feb. 1, 1926.....	9, 10, 14, 41
Mooney vs. Belleville Stone Co., 61 N. J. L. 253.....	4, 25
Moore vs. R. R. Co., 185 N. C. 189.....	5, 26
Murray vs. South Carolina, 1 McMullan's 385, 36 Am. Dec. 268.....	3, 17, 22
Nelson vs. Willey, 26 Wash. 548.....	39
New Pittsburgh vs. Peterson, 136 Ind. 398.....	21
Norman vs. Shipowners, 59 Wash. 244.....	8, 38
Northern Pacific vs. Charles 162 U. S. 359.....	31
Northern Pacific vs. Dixon, 194 U. S. 399.....	27, 31
O'Brien vs. Page, 39 Wash. 537.....	6, 26
Ocean SS. Co. vs. Cheeny, 86 Ga. 278.....	39
Ondix vs. Tea Co., 82 N. J. L. 511.....	4, 25
Osceola, 189 U. S. 158.....	7, 35, 36, 43
Pacific Amer. Fisheries vs. Hoof, 291 Fed. 306.....	8, 40
Panama vs. Johnson, 264 U. S. 375.....	9, 16, 43
Panama vs. Minnix, 282 Fed. 47.....	8, 39
Peters vs. George, 154 Fed. 634.....	5, 26
Pickard, Evolution of Law Series, Vol. 3, p. 678.....	35
Pioneer, 78 Fed. 600.....	8, 39
Pollock, "Genius of the Common Law" 102.....	3, 18
Portance vs. Coal Co., 101 Wis. 574.....	39
Postal Tele. Co. vs. Hulsey, 132 Ala. 444.....	5, 25
Pound, Spirit of the Common Law, p. 170.....	38
Preston vs. R. Co. 292 Mo. 442.....	5, 26
Quebec vs. Merchant, 133 U. S. 375.....	43
Queen, 40 Fed. 694.....	37

# INDEX CONTENTS

	Page
Quinn vs. N. J. Lighterage, 23 Fed. 363.....	37
Randall vs. Baltimore, 109 U. S. 478.....	30
R. C. L. 18, 758.....	19
R. C. L. 28, 750.....	15
R. C. L. 18, p. 715.....	3, 17
R. C. L. 18, p. 716, 717, 730, 731.....	4, 18
R. C. L. 18, p. 734.....	4, 25, 27
R. C. L. 18, p. 730-731.....	21
R. C. L. 18, p. 821 824.....	6, 29
R. C. L. 28, p. 712.....	6, 29
R. C. L. 18, p. 825.....	6, 30
Red Cross Line vs. Atlantic Fruit, 264 U. S. 109.....	9, 41
Reed vs. Director General, 258 U. S. 92.....	7, 32
Richmond vs. Bailey, 92 Va. 554.....	5, 26
Santa Fe vs. Holmes, 201 U. S. 438.....	4, 25, 27, 40
Schoen vs. R. Co., 112 Minn. 38.....	5, 26
Second Employers Liability Cases, 223 U. S. 1.....	6, 30
Siebert vs. Patapsco, 253 Fed. 685.....	8, 40
South & Central America vs. Panama 237 N. Y. 287.....	43
Southern Pacific vs. Jensen 214 U. S. 205.....	3
Standard Oil vs. Anderson, 212 U. S. 215.....	8, 37, 40
Standard Oil vs. Brown, 218 U. S. 78.....	4, 25, 28
State ex rel Davis-Smith vs. Clausen, 65 Wash. 156.....	13
St. Louis vs. Jeffries, 276 Fed. 73.....	3, 6, 9, 10, 13, 31, 44
Texas vs. Baurman, 212 U. S. 536.....	31
Toledo R. Co. vs. Bartley, 172 Fed. 494.....	5, 25
Union Pac. vs. Fort, 17 Wall. 553.....	4, 25, 27
United vs. Kuchan, 253 Fed. 425.....	5, 26
Victoria, 69 Fed. 160.....	8, 40
Wabash vs. McDaniels, 17 Otto 454.....	4, 27
Waiswilla vs. R. Co., 220 Ill. App. 113.....	5, 26
Washington vs. Dawson, 264 U. S. 232.....	7, 35, 36
Wendell vs. Penn., 57 N. J. L. 467.....	5, 25
Western Electric vs. Hanselman, 136 Fed. 564.....	6, 26
Western Fuel vs. Garcia, 257 U. S. 233.....	9, 40, 41
Westlund vs. Rothchild, 53 Wash. 626.....	8, 38
World Almanac, 1924, p. 339.....	19

## STATUTES

Sec. 20 Act of March 4, 1915, 38 Stat. at L. 1185.....	9, 42
Sec. 33 Act of June 5, 1920, 41 Stat. at L. 1007.....	9, 42
Lord Campbell's Act, 43 and 44 Vict. Chap 42.....	29
Merchants Shipping Act of 1876, 29 and 40 Vict. Chap 80, Sec. 5.....	36